THE HON'BLE Ms. JUSTICE G. ROHINI

WRIT PETITION No.23405 OF 2006

ORDER:

This writ petition is filed seeking a declaration that the action of the 2nd respondent-Bank in proposing to sell Flat No.203 situated in House No.1-4-881, Gandhinagar, Bakaram, as arbitrary and illegal.

As per the averments in the affidavit filed in support of the writ petition, the petitioner had purchased Flat No.203, situated in second floor of the premises bearing No.1-4-881, Gandhinagar, Bakaram, Hyderabad, under a registered sale deed dated 9.2.2003 from the 4th respondent. Having taken possession of the same, the petitioner has let out the said Flat and the same is in occupation of a tenant. It is pleaded that the petitioner's vendor (4th respondent) had purchased the Flat in question from one S.A.Hammed, Smt Rima Bibi and M/s Chakkilam Estates (P) Limited, under a registered sale deed dated 13.6.2001.

While so, in pursuance of an order passed in Criminal Case No.2525 of 2006, on the file of the Court of the Chief Metropolitan Magistrate, Hyderabad, under Section 14 of the Securitisation and Reconstruction of financial Assets and Enforcement of Security Interest Act, 2002 (for short "the Act"), the officials of the 2nd respondent-Bank along with Advocate-Commissioner and police personnel attempted to take possession of the petitioner's Flat No.203 alleging that the said Flat is a secured asset in connection with a loan availed by the 3rd respondent from the 2nd respondent-Bank. Aggrieved by the same, the petitioner filed O.S.No.1078 of 2006 on the file of the Court of V Senior Civil Judge, City Civil Court, Hyderabad on 27.6.2006 for declaration of title in respect of Flat No.203 and for perpetual injunction restraining the 2nd respondent-Bank from taking possession. Though the suit is pending, the learned Senior Civil Judge by order dated 28.6.2006 dismissed the application for

temporary injunction on the ground that the jurisdiction of the Civil Court is ousted under Section 34 of the Act. Subsequently, the 2nd respondent-Bank issued an auction notice dated 13.10.2006 proposing to sell the Flat in question on 15.11.2006. Hence, this writ petition with the above prayer.

I have heard the learned counsel for the petitioner and perused the material on record.

At the outset, it is to be noted that in the impugned auction notice, item No.17 of the properties proposed to be sold has been described as Flat No.103, First floor, House No.1-4-881, SBI Colony, Bakaram, Hyderabad. The name of the borrower/mortgager was shown as N. Umamaheswara Rao (3rd respondent). Even in the possession notice issued under Section 13(4) of the Act, the borrower was shown as N. Umamaheswara Rao, who is liable to pay a sum of Rs.8,13,685/- to the 2nd respondent-Bank and the secured asset was described as Flat No.103, First floor, situated in the premises bearing No.1-4-881, SBI Colony, Gandhinagar, Bakaram, Hyderabad.

The petitioner, who claims to be the owner and possessor of Flat No.203, situated in second floor of the premises bearing No.1-4-881, alleges that the 2nd respondent-Bank has been taking steps to dispossess him and to sell the Flat belonging to him under the guise of the proceedings initiated under the Act against the 3rd respondent in spite of the fact that he has nothing to do with the said loan transaction. It is alleged that though the petitioner made a representation to the 2nd respondent-Bank explaining the fact that Flat No.203 is not a secured asset, without verifying the sanction plan, the 2nd respondent has been proceeding against his Flat bearing No.203.

On the face of it, the dispute raised by the petitioner involves several disputed questions of fact. As noted above, in the possession notice issued under Section 13(4) of the Act as well as in the auction notice, the secured asset was described as Flat No.103, belonging to

the 3rd respondent. Except his own affidavit, no other material has been placed before this Court to show that the petitioner's Flat has been brought to sale. Such a disputed question of fact, which requires enquiry, on appreciation of evidence, oral and documentary, cannot be gone into by this Court in a writ proceeding under Article 226 of the Constitution of India.

As can be seen from the language of Section 17 of the Act any person aggrieved by any of the measures referred to in sub-section (4) of Section 13, is entitled to make an application to the Debts Recovery Tribunal having jurisdiction in the matter, which is competent to examine the facts and circumstances of the case and the evidence produced by the parties and to record a finding as to the correctness of the measures taken by the secured creditor. If the Tribunal concludes that the measures taken by the secured creditor are not in accordance with the provisions of the Act and the Rules made thereunder, the Tribunal may require restoration of the management of the secured assets to the borrower or restoration of possession of the secured assets to the borrower by declaring that such measures taken by the secured creditor are invalid. The law is well settled that the remedy under Section 17 of the Act is available even against the order passed under Section 14 of the Act. In the circumstances, if aggrieved, the petitioner ought to have availed the efficacious alternative remedy available under Section 17 of the Act.

Accordingly, granting leave and liberty, the writ petition is dismissed. No costs.

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(G. ROHINI, J.

13th November, 2006.

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THE HON'BLE Ms. JUSTICE G. ROHINI

WRIT PETITION No.23405 OF 2006

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13th November, 2006.

Between:

Jandhyala Venkataramana Murthy. .. Petitioner.

And

The Chief Metropolitan Magistrate,
Nampalli, Hyderabad and others. .. Respondents.